

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RICHARD A. GALLE,

Plaintiff,

v.

Case No. 06-x-50356

RUFUS H. "BUD" REITZEL and
ASSET ACCEPTANCE,

HONORABLE AVERN COHN

Defendants.

_____ /

ORDER OF TRANSFER TO THE SOUTHERN DISTRICT OF MISSISSIPPI

I.

This is an action to enforce a subpoena in a case that is pending in the District Court for the Southern District of Mississippi involving the same parties, Galle v. Reitzel, 03-CV-00917.

Before the Court is plaintiff's "Motion to Compel Discovery Seeking a Contempt of Court Ruling Against the Defendants With Relief," in which plaintiff seeks to compel defendant Asset Acceptance's compliance with a subpoena. Plaintiff alternatively requests that the matter be transferred. For the reasons that follow, the matter is TRANSFERRED to the Southern District of Mississippi.

II.

Plaintiff, proceeding pro se, sued defendants in Mississippi state court alleging defendants have improperly continued to list a debt on his credit report as unpaid. On December 3, 2003, defendants removed the case to the Southern District of Mississippi

where it was referred to a magistrate judge. The case proceeded in discovery and the parties engaged in extended motion practice. In March of 2005, plaintiff obtained a subpoena seeking various documents from Asset Acceptance. The subpoena was issued from this district as this is where Asset Acceptance's corporate office is located. Also in March of 2003, Asset Acceptance filed a motion to quash the subpoena in the Southern District of Mississippi. On October 24, 2005, the magistrate judge denied the motion apparently on the grounds that it lacked jurisdiction because the subpoena issued from this district. Asset Acceptance did not seek to quash the subpoena in this district. The parties continued to engage in discovery and motion practice.

On April 18, 2006, plaintiff filed the instant motion which was assigned to the Court's miscellaneous docket, essentially requesting enforcement of the subpoena. Plaintiff filed a similar motion in the Southern District of Mississippi on April 5, 2006.

III.

Fed. R. Civ. P. 45 governs motions to quash or modify subpoenas. Under Rule 45(c)(3), motions to quash, modify, or condition the subpoena are made to the district court in the district from which the subpoena was issued. However, "it is within the discretion of the court that issued the subpoena to transfer motions involving the subpoena to the district in which the action is pending." 9A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2463 at 79 (1995) (citing In re Digital Equip. Corp., 949 F.2d 228 (8th Cir.1991)) (the district court may in its discretion remit a discovery matter involving deposition subpoenas to the court in which the action is pending). See Petersen v. Douglas County Bank & Trust Co., 940 F.2d 1389 (10th Cir. 1991) (holding that sua sponte transfer of motion to quash to forum where underlying

litigation was pending was not improper). See also The Goodyear Tire & Rubber Co. v. Kirk's Tire & Auto Servicecenter of Haverstraw, Inc., 211 F.R.D. 658 (D. Ka. 2003); Pactel Personal Communications v. JMB Realty Corp., 133 F.R.D. 137 (E.D.Mo. 1990) (the district court may issue an order transferring, inter alia, a motion to quash subpoena duces tecum filed on nonparties to the forum where the underlying litigation is pending, pursuant to the power granted in Rule 26(c)))

In light of the Court's discretionary authority to transfer this matter to the court where the underlying litigation is pending, the Court believes that in the interest of uniformity and judicial economy, it is appropriate to transfer this matter to the Southern District of Mississippi.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: April 26, 2006

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, April 26, 2006, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager
(313) 234-5160